UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. Apolinar Roa-Lopez, Defendant.	)	Criminal No. 08 MJ 8648 PCL DETENTION ORDER

A. **Order For Detention**

After conducting a detention hearing pursuant to 18 U.S.C.§3142(f) of the Bail Reform Act, the Court orders the above named defendant detained pursuant to 18 U.S.C. §3142(e) and (i).

B. **Statement of Reasons For the Detention**

The Court orders the defendant's detention because it finds:

__X__ By a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required.

______ By clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

C. **Findings of Fact**

The Court's findings are based on the evidence which was presented in Court and that which was contained in the Pretrial Services Report, and includes the following:

__X__ (1) Nature and circumstances of the offense charged:

__X__ (a) The crime:

8 USC 1326 Deported Alien found in the United States

is a serious crime and carries a maximum penalty of 2 years

______ (b) The offense is a crime of violence.

______ (c) The offense involves a narcotic drug.

______ (d) The offense involves a large amount of controlled substances, to wit:

____

__X__ (2) The weight of the evidence against the defendant is high but is the least significant factor.

__X__ (3) The history and characteristics of the defendant including:

__X__ (a) General Factors:

______ The defendant appears to have a mental condition which may affect whether the defendant will appear.

______ The defendant has no family ties in the area.

______ The defendant has no steady employment.

__X__ The defendant has no substantial financial resources or bond proposals.

______ The defendant is not a long time resident of the community.

__X__ The defendant does not have any significant community ties.

______ Past conduct of the defendant:_______________________________________

____

______ The defendant has a history relating to drug abuse.

______ The defendant has a history relating to alcohol abuse.

__X__ The defendant has a significant prior criminal record.

______ The defendant has a prior record of failure to appear at court proceedings.

______ The defendant has a prior record of probation, parole or supervised release violations and/or revocations.

______ (b) At the time of the current arrest, the defendant was on:

______ Probation

______ Parole

______ Release pending trial, sentence, appeal or completion of sentence.

______ (c) Other Factors:

__X__ The defendant is an illegal alien and is subject to deportation.

______ The defendant is a legal alien and will be subject to deportation if convicted.

______ Other:____

____

______ (4) The nature and seriousness of the danger posed by the defendant's release are as follows:____

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______ (5) Rebuttable Presumptions

In determining that the defendant should be detained, the Court also relied on the following rebuttable presumptions(s) contained in 18 U.S.C. §3142(e) which the Court finds the defendant has not rebutted.

______ (a) That no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of any other person and the community because the Court finds that the crime involves:

______ (A) A crime of violence; or

______ (B) An offense for which the maximum penalty is life imprisonment or death; or

______ (C) A controlled substance violation which has a maximum penalty of 10 years or more; or,

______ (D) A felony after the defendant had been convicted of two or more prior offenses described in (A) through (C) above, and the defendant has a prior conviction for one of the crimes mentioned in (A) through (C) above which is less than five years old and which was committed while the defendant was on pretrial release,

______ (E) A felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device, or any other dangerous weapon, or involves a failure to register under § 2250 of Title 18, United States Code.

______ (b) That no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because the Court finds that there is probable cause to believe:

______ (A) That the defendant has committed a controlled substance violation which has a maximum penalty of 10 years or more.

______ (B) That the defendant has committed an offense under 18 U.S.C. §924(c) (uses or carries a firearm during and in relation to any crime of violence, including a crime of violence, which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device).

D. **Additional Directives**

IT IS ORDERED that the defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with his counsel.

While in custody, on order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance stipulated to by defense and Government counsel.

IT IS SO ORDERED.

DATED: JULY 16, 2008

PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE